

Introduced by Senator Wright

February 22, 2013

An act to amend Sections 60290, 60315, 60335, 60336, and 60339 of, and to repeal Sections 60291 and 60328.1 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as introduced, Wright. Water replenishment districts.

(1) Existing law, the Water Replenishment District Act, provides for the formation of water replenishment districts and grants authority to a water replenishment district relating to the replenishment, protection, and preservation of groundwater supplies within that district. The act generally authorizes a water replenishment district to establish an annual reserve fund in an amount not to exceed \$10,000,000 commencing with the 2000–01 fiscal year, and thereafter, as that amount is adjusted annually. The act requires a minimum of 80% of the reserve fund to be expended for water purchases.

This bill would eliminate the requirement that the reserve fund not exceed \$10,000,000 and related provisions. This bill instead would permit the district to establish an annual reserve fund maintained according to generally accepted accounting principles. This bill would authorize the board to transfer funds to a designated reserve, require the board to declare the exclusive purposes for which the moneys in a designated reserve fund may be spent and restrict those moneys only for the exclusive purposes for which the board established the designated reserve, as prescribed.

(2) The act requires the board of directors of a water replenishment district to declare whether funds are to be raised to purchase water for replenishment, as specified, and whether the funds are to be raised either

by a water charge, a general assessment, a replenishment assessment, or a combination, as prescribed. The act requires the board to make certain determinations in connection with a decision to impose a water replenishment assessment and requires the water replenishment assessment to be fixed at a uniform rate per acre-foot of groundwater produced within the district. The act provides that if a producer knowingly fails to pay a replenishment assessment within 30 days of when due the producer is liable to the district for interest at the rate of 1% per month on the delinquent amount of the assessment.

This bill, instead, would provide that the producer is liable to the district for a penalty of 5% of the unpaid assessment as of the due date in addition to interest at the rate of 1% per month, or part of a month the assessment remains unpaid. This bill would prohibit the penalty from exceeding 25% of the total unpaid assessment.

(3) The act provides that any operator of a water-producing facility that knowingly fails to register his or her water-producing facility or knowingly fails to file a groundwater production statement, or any other reports or statements required, as specified, in addition to interest due, as prescribed, is liable to the district for a penalty of \$150.

This bill would provide that the operator is liable to the district for a penalty of \$1,000.

(4) The act authorizes the superior court of the county in which the major portion of the district lies to issue a temporary restraining order upon the filing by the district with the court of a verified petition or complaint setting forth that the defendant is the operator of a water-producing facility that has not been registered with the district or that the defendant is delinquent in the payment of a replenishment assessment, as specified.

This bill would require the court to direct that the party prevailing on any motion, as prescribed, be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 60290 of the Water Code is amended to
2 read:

1 60290. (a) The district may establish an annual reserve fund
2 ~~in an amount not to exceed ten million dollars (\$10,000,000)~~
3 ~~commencing with the 2000-01 fiscal year. The maximum~~
4 ~~allowable reserve fund may be adjusted annually commencing~~
5 ~~with 2001-02 fiscal year to reflect percentage increases or~~
6 ~~decreases in the blended cost of water from district supply sources.~~
7 ~~A minimum of 80 percent of the reserve shall be for water~~
8 ~~purchases that shall be maintained according to generally accepted~~
9 ~~accounting principles. The board may transfer funds to a~~
10 ~~designated reserve fund any time after the establishment of the~~
11 ~~fund.~~

12 (b) *When the board establishes a designated reserve described*
13 *in subdivision (a), the board shall declare the exclusive purposes*
14 *for which the moneys in the designated reserve fund may be spent.*
15 *The moneys in a designated reserve shall be spent only for the*
16 *exclusive purposes for which the board established the designated*
17 *reserve. If the board finds that the funds in a designated reserve*
18 *are no longer required for the purpose for which it established the*
19 *designated reserve, the board may discontinue the designated*
20 *reserve or transfer any funds that are no longer required from the*
21 *designated reserve to the district's general fund.*

22 SEC. 2. Section 60291 of the Water Code is repealed.

23 ~~60291. The limitation on the reserve established in Section~~
24 ~~60290 does not apply to the unexpended balance of any~~
25 ~~appropriated funds in a capital improvement project construction~~
26 ~~account established to pay the cost of a project or projects under~~
27 ~~construction.~~

28 SEC. 3. Section 60315 of the Water Code is amended to read:

29 60315. Upon completing the hearing, but no later than the
30 second Tuesday in May, the board shall, by resolution, find all of
31 the following:

- 32 (a) The annual overdraft for the preceding water year.
33 (b) The estimated annual overdraft for the current water year.
34 (c) The estimated annual overdraft for the ensuing water year.
35 (d) The accumulated overdraft as of the last day of the preceding
36 water year.
37 (e) The estimated accumulated overdraft as of the last day of
38 the current water year.
39 (f) The total production of groundwater from the groundwater
40 supplies within the district during the preceding water year.

1 (g) The estimated total production of groundwater from the
2 groundwater supplies within the district for the current water year.

3 (h) The estimated total production of groundwater from the
4 groundwater supplies within the district for the ensuing water year.

5 (i) The changes during the preceding water year in the pressure
6 levels or piezometric heights of the groundwater contained within
7 pressure-level areas of the district, and the effects thereof upon
8 the groundwater supplies within the district.

9 (j) The estimated changes during the current water year in the
10 pressure levels or piezometric heights of the groundwater contained
11 within pressure-level areas of the district, and the estimated effects
12 thereof upon the groundwater supplies within the district.

13 (k) The quantity of water that should be purchased for the
14 replenishment of the groundwater supplies of the district during
15 the ensuing water year.

16 (l) The source and estimated cost of water available for the
17 replenishment.

18 (m) The estimated costs of replenishing the groundwater supplies
19 with the water so purchased.

20 (n) The estimated costs of purchasing, in water years succeeding
21 the ensuing water year, that portion of the quantity of water which
22 should be purchased for the replenishment of the groundwater
23 supplies of the district during the ensuing water year, but which
24 is estimated to be unavailable for purchase during the ensuing
25 water year; estimated costs shall be based on the estimated price
26 of water for replenishment purposes during the ensuing water year.

27 (o) The estimated rate of the replenishment assessment required
28 to be levied upon the production of groundwater from the
29 groundwater supplies within the district during the ensuing fiscal
30 year for the purposes of accomplishing the replenishment and
31 providing a reserve fund to purchase in future years, when
32 available, that portion of the quantity of water which should be
33 purchased for the replenishment of the groundwater supplies of
34 the district during the ensuing water year, but which is estimated
35 to be unavailable for purchase during that ensuing water year.

36 (p) Whether any contaminants should be removed from
37 groundwater supplies during the ensuing fiscal year, and whether
38 any other actions under Section 60224 should be undertaken during
39 the ensuing fiscal year, the estimated costs thereof, and the
40 estimated additional rate of replenishment assessment required to

1 be levied upon the production of groundwater from the
2 groundwater supplies within the district during the ensuing fiscal
3 year for those purposes.

4 (q) Whether any program for removal of contaminants or other
5 actions under Section 60224 should be a multiyear program or is
6 a continuation of a previously authorized multiyear program.

7 ~~(r) The amount, if any, by which the estimated reserve funds~~
8 ~~on hand at the end of the current fiscal year will exceed the annual~~
9 ~~reserve fund limit determined pursuant to Section 60290.~~

10 SEC. 4. Section 60328.1 of the Water Code is repealed.

11 ~~60328.1. The district shall apply the estimated fiscal yearend~~
12 ~~balance in excess of the amount permitted in Section 60290 to a~~
13 ~~replenishment assessment rate reduction or to the purchase of water~~
14 ~~in the succeeding fiscal year.~~

15 SEC. 5. Section 60335 of the Water Code is amended to read:

16 60335. If any producer shall knowingly fail to pay a
17 replenishment assessment within 30 days of when due, ~~such the~~
18 producer shall become liable to the district for *a penalty of 5*
19 *percent of the unpaid assessment as of the due date in addition to*
20 *interest at the rate of 1 percent per month, or part of a month that*
21 *the assessment remains unpaid*, on the delinquent amount of the
22 assessment. *The penalty shall not exceed 25 percent of the total*
23 *unpaid assessment.*

24 SEC. 6. Section 60336 of the Water Code is amended to read:

25 60336. Should any operator of a water-producing facility
26 knowingly fail to register his *or her* water-producing facility or
27 knowingly fail to file the ground water production statement, or
28 knowingly fail to file and furnish any other reports or statements
29 required by resolution of the board adopted pursuant to Section
30 60326, ~~he the operator~~ shall, in addition to interest as provided in
31 Section 60335, become liable to the district for a penalty of one
32 ~~hundred fifty thousand dollars (\$150)~~ *(\$1,000)*.

33 SEC. 7. Section 60339 of the Water Code is amended to read:

34 60339. (a) The superior court of the county in which the major
35 portion of the district lies may issue a temporary restraining order
36 upon the filing by the district with the court of a verified petition
37 or complaint setting forth that the person named therein as
38 defendant is the operator of a water-producing facility which has
39 not been registered with the district or that the defendant is
40 delinquent in the payment of a replenishment assessment. The

1 temporary restraining order shall be returnable to the court on or
2 before ten (10) days after its issuance.

3 (b) The court may issue and grant an injunction restraining and
4 prohibiting the named defendant from the operation of any
5 water-producing facility when it is established by the
6 preponderance of the evidence at a hearing that the defendant has
7 failed to register the water-producing facility with the district or
8 that the defendant is delinquent in the payment of a replenishment
9 assessment. The court may provide that the injunction so made
10 and issued shall be stayed for a period not to exceed 10 days to
11 permit the defendant to register the water-producing facility or to
12 pay the delinquent replenishment assessment.

13 (c) Service of process shall be made by posting a copy of the
14 summons and complaint upon the water-producing facility or the
15 parcel of land upon which the water-producing facility is located
16 and by personal service of summons and complaint upon the named
17 defendant.

18 (d) The right to proceed for injunctive relief as provided in this
19 section shall be in addition to any other right which may be
20 provided elsewhere in this act or which may be otherwise allowed
21 by law. The procedure provided in Chapter 3 (commencing with
22 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure
23 regarding injunctions shall be followed except insofar as it may
24 be otherwise provided in this section.

25 (e) *The court shall direct that the party prevailing on any motion*
26 *under this section be awarded the reasonable attorney's fees and*
27 *costs of making or opposing the motion unless the court finds that*
28 *the other party acted with substantial justification or that other*
29 *circumstances make the imposition of attorney's fees and costs*
30 *unjust.*